

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-212575.2

DATE: June 20, 1984

MATTER OF: Eaton-Kenway

DIGEST:

1. In camera review of proposals and evaluation material shows reasonable basis for scoring of awardee's proposal 17 percent higher than the protester's for technical merit. Since the solicitation stated the agency would make award based on a predetermined formula numerically weighting price in relation to technical merit, the agency properly followed the formula in making the award notwithstanding that the awardee's proposal was more costly.
2. GAO will not attribute bias to procurement officials on the basis of inference or supposition; the protester must submit virtually irrefutable proof that the officials had a specific and malicious intent to harm the protester.

Eaton-Kenway protests the Air Force's award of a contract to Sperry Corporation under request for proposals No. F09650-82-R0245. The solicitation contemplated the award of a fixed price contract to acquire automated warehouse systems for several Air Force bases, and stipulated that the Air Force would use a numerically weighted formula to select the contractor, under which technical factors would have the most weight although price would still have significant weight. While the solicitation did not disclose the precise evaluation formula, the Air Force applied a formula settled upon before the receipt of proposals under which Sperry received the best score even though its offered price was more than \$16 million (and more than 36 percent) higher than the protester's. The protester basically complains that, given the difference between the prices offered, the selection of Sperry must have resulted from a misapplication of the solicitation's evaluation criteria or from bias, and argues that in any event the result is totally irrational.

We deny the protest because there is nothing indicating that the agency's technical evaluation of proposals or its application of the evaluation formula was improper.

I. Solicitation and Background

The solicitation listed five areas of technical consideration--1) Company and major subcontractor factors, 2) Software, 3) Hardware, 4) Equipment, and 5) General--and explained that each area had been assigned a certain number of points commensurate with its importance. The solicitation further explained that the criteria were listed in descending order of importance (except for the first two, which were equal), but did not identify the precise weight for each criterion.

The solicitation stated that price would also be point-scored by assigning 100 percent of the available points for price to the proposal offering the lowest price and proportionally lower scores to all other proposals based on the percentage of the low price to their prices. Under the terms of the solicitation, the points assigned to both technical merit and price would be totaled and the award made to the offeror with the highest point total.

The solicitation, however, did not disclose the precise weight for price in relationship to technical merit. It simply explained that price, while a significant evaluation criterion, was less important than technical merit but more important than any of the five areas for technical evaluation.

In fact, the Air Force utilized a formula (established before the solicitation was issued) under which 700 points were available for technical merit and 300 points for price. No major technical area was assigned more than 175 points, and the available technical points were allocated to 20 subfactors of the listed technical areas. While Eaton-Kenway offered the lowest price at \$45,258,832, and therefore received the maximum 300 points available for price, it received only 356.74 technical points, for a total score of 656.74. Sperry's offered price of \$61,736,624 was worth only 219.90 points, but its technical score of 476.64 gave it more than enough points--696.54--to offset Eaton-Kenway's price advantage. In conformance with the formula, the Air Force made award to Sperry.

Learning of the award from the Wall Street Journal, the protester requested a debriefing from the Air Force and the disclosure of information under the Freedom of Information Act regarding the evaluation of its and Sperry's offers. The debriefing resulted in the protester's submitting written questions, which the Air Force answered in writing. In response to the protester's inquiry as to why it did not receive the highest available points for each technical area, the Air Force only responded:

"Eaton-Kenway's proposal was reviewed by evaluators that were knowledgeable in areas they were evaluating. Proposal was compared against standards and points assigned accordingly."

The Air Force also declined to release the evaluation plan and the point evaluations requested under the Freedom of Information Act.

Subsequently, Eaton-Kenway filed its protest here.

II. Discussion

A. Notice of Reasons for Rejection

Before proceeding to the merits, we point out that applicable procurement regulations require that an unsuccessful offeror be given a post-award rejection notice including, in general terms, the reasons why the offeror's proposal was not accepted, and also require that upon written request an unsuccessful offeror be debriefed on the determinative deficiencies and weaknesses contained in its proposal. Defense Acquisition Regulation (DAR) §§ 3-508.3(a)(v) and 3-508.4 (1976 ed.). The extent of the Air Force's revelation to Eaton-Kenway, in response to the firm's protest and Freedom of Information Act request, of the deficiencies in Eaton-Kenway's final offer is confined to the two sentences quoted above. In our view, this represents a clear failure to comply with the cited regulations.

We recognize that such failure constitutes a procedural deficiency that does not provide a basis for disturbing an otherwise valid award, Southwest Marine, Inc., B-210101.2, July 11, 1983, 83-2 CPD ¶ 72; moreover, we have no authority to determine what documentation an agency should disclose to a requester under the Freedom of Information Act. Energy Complexes, Inc., B-209454, July 26, 1983, 83-2 CPD ¶ 125. Nevertheless, deficiencies such as

this obviously give rise to suspicion of irregularities, and hamper our bid protest function, under which the burden is on aggrieved parties to come forward with evidence of alleged procurement deficiencies.

We therefore are recommending to the Secretary of the Air Force by separate letter that he call procurement officials' attention to the need to disclose meaningful information concerning the agency's significant reasons for rejecting an offeror's proposal that would include, at a minimum, disclosure of the significant relative strengths and weaknesses of the offeror's proposal. .

B. Reasonableness of the Technical Evaluation

Initially, we point out that the Air Force has denied the protester access to its competitor's proposal and to much of the source selection material, so that we have reviewed the proposals and the selection material in camera. Our discussion of their contents therefore is limited because of the agency's restriction of their disclosure. See Cadillac Gage Company, B-209102, July 15, 1983, 83-2 CPD ¶ 96.

The evaluation documents submitted by the Air Force, including the technical evaluators' point scores for each subfactor and occasional narrative comments, indicate that Sperry submitted a technically superior proposal and that Eaton-Kenway's proposal contained numerous informational deficiencies.

The protester's technical proposal consistently received less than 60 percent of the points available under each subfactor of the major technical areas; its total technical score of 356.74 was approximately 51 percent of the 700 technical points available. The evaluation documents indicate that, in the evaluator's judgment, the protester consistently failed to provide sufficient detail or analysis to demonstrate its understanding of the Air Force's requirements (often stated in functional terms) and neglected to provide sufficient information to show the proposed approach would be successful. In this regard, the solicitation's section captioned "TECHNICAL PROPOSAL REQUIREMENTS," comprised of almost 30 pages of informational requirements, contained many requirements for

descriptions of how tasks would be accomplished and information explaining the rationale for the offeror's choice of components proposed for the system.

Sperry's proposal, on the other hand, received higher scores than the protester's proposal in 19 of the 20 technical subfactors, and its total technical score of 476.64 was approximately 68 percent of the 700 points available--that is, 17 percent more than the protester's score. The narrative remarks of the technical evaluators and a memorandum prepared by the contracting officer cite several general advantages of Sperry's proposal over the protester's, particularly regarding Sperry's proposed automatic data processing equipment and software.

In reviewing protests of technical evaluations, this Office does not independently determine the relative merits of proposals, since the evaluation of proposals is primarily a matter of the procuring agency's discretion. We therefore limit our review to an examination of whether the evaluation was reasonable and in accordance with the listed evaluation criteria, and we will not question an agency's technical evaluation unless it is shown to be arbitrary or otherwise in violation of procurement statutes and regulations. Leo Kanner Associates, B-213520, March 13, 1984, 84-1 CPD ¶ 299.

Nothing in the record suggests that the technical evaluators unreasonably scored Sperry's proposal considerably higher than the protester's proposal. Our review of the proposals supports the evaluator's conclusion that Sperry submitted a technically superior proposal and provided more information demonstrating the suitability of its approach, whereas the protester's proposal was deficient in this regard. Since the solicitation required not only that the offerors design an automated warehouse system but that they also provide the rationale for their plans, an offeror's proposal had to establish in detail the suitability and desirability of its proposed approach and show that it would meet the government's needs. The Bendix Corporation, B-208184, September 16, 1983, 83-2 CPD ¶ 332. No matter how capable an offeror may be, it cannot expect to be considered for an award if it does not submit an adequately written proposal, since proposals must be evaluated on the basis of the information furnished with them. Aqua-Tech, Inc., B-210593, July 14, 1983, 83-2 CPD ¶ 91.

Moreover, lest the protester misconstrue the agency's inclusion of both its and Sperry's proposal in the competitive range as indicating that the proposals were more equal in technical merit, we point out that the solicitation specifically provided that "there shall be no rejection of a proposal for technical inferiority to another proposal without price consideration." The record indicates that while the protester's strength was its low price, Sperry's strength was its superior technical proposal.

C. Application of the Formula

Since the agency's predetermined evaluation formula weighted technical merit 2-1/3 times the importance of price, Sperry's 17 percent technical advantage was more significant than Eaton-Kenway's 36 percent price advantage; that is the reason why application of the formula resulted in Sperry having an advantage of almost 40 points (or 4 percent) out of the total 1000 points available for technical merit and price.

We find no basis for objecting to the agency's application of the formula, which clearly was consistent with the solicitation's description of the evaluation criteria's relative importance, to select the awardee. As discussed previously, the solicitation advised offerors that the Air Force would make an award on the basis of a numerically weighted formula under which points had already been assigned, and explained that technical merit was more important than price, although price was significant and itself more important than any of the five listed major technical areas.

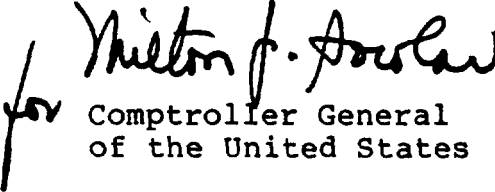
In effect, then, the solicitation notified offerors that the agency had predetermined the tradeoff between technical merit and price. See Harrison Systems Ltd., B-212675, May 25, 1984, 84-1 CPD ¶ _____; Telecommunications Management Corp., 57 Comp. Gen. 251 (1978), 78-1 CPD ¶ 80. Under these circumstances, the point scores were to be controlling unless source selection officials determined that, notwithstanding a difference in the technical scores of proposals, there was no significant difference in their technical merit, in which event price would have become the deciding factor. See Harrison Systems Ltd., supra; Bunker Ramo Corporation, 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427. Here the selection officials found that Sperry's higher technical score reflected significant technical advantages. Therefore, they properly adhered to the results of the evaluation formula.

D. Alleged Bias

Eaton-Kenway alleges that the Air Force amended the solicitation after the receipt of proposals to relax certain specifications for the benefit of Sperry. The protester offers this circumstance and the award to Sperry in the face of a \$16 million price difference as evidence that the Air Force was biased in its selection of a contractor.

Where, as here, a protester alleges that procurement officials acted intentionally to preclude the protester from receiving the award, the protester must submit virtually irrefutable proof that the officials had a specific and malicious intent to harm the protester, since contracting officials otherwise are presumed to act in good faith. Lion Brothers Company, Inc., B-212960, Dec. 20, 1983, 84-1 CPD ¶ 7. Prejudicial motives will not be attributed to such officials on the basis of inference or supposition. Reliability Sciences, Incorporated, B-205754.2, June 7, 1983, 83-1 CPD ¶ 612. In this regard, we point out that an agency properly may amend specifications and reopen negotiations where it discovers that less restrictive specifications will meet the agency's needs. See, e.g., Squibb-Vitatek, Inc., B-205306, July 27, 1982, 82-2 CPD ¶ 81. The protester has not shown that the contracting officials amended the solicitation for any other reason, but merely calls our attention to the amendment and the price difference between proposals as raising an inference of bias. In our view, the protester has failed to meet its burden regarding bias, and we will not consider the matter further.

The protest against the selection of Sperry is denied.


for Comptroller General
of the United States